

Developing Los Angeles County's Models for Pretrial Release

Money bail was originally created with the thinking that it provided a financial incentive for a person who has been accused of a crime, but not yet convicted, to return to court at a later date, for subsequent hearings. Several forms of money bail are used in today's courts. The most common form is "surety bail bond," by which a person pays not the full amount but a fee (usually, around 10 percent of the bail amount) to a commercial bail agent. That bail agent agrees to pay the full bail amount if the person fails to appear at a court hearing. The 10 percent fee is not returned to the person, and bail agents often also require the person (or their friends and family) to sign over collateral to cover the full bail amount. The United States and the Philippines are the only two countries in the world with a legalized for-profit bond industry.

Our reliance on bail has essentially created a two-tiered justice system in the U.S. Many of the nearly half a million unconvicted people confined in jails on any given day are there because they can't afford to pay bail. As people await court hearings behind bars, sometimes for months or even years, they suffer from inadequate medical care and even dangerous conditions, and many lose their jobs and housing. They also have a higher chance of being convicted than if they hadn't been assigned bail, as they take plea bargains just to get out of jail, whether or not they actually committed a crime.

MOTION

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Poorer Americans and people of color often can't afford to come up with money for bail, leaving them stuck in jail awaiting trial, sometimes for months or years. Meanwhile, wealthy people accused of the same crime can buy their freedom and return home.

Across the country, money bail is set at levels that are far too high for many people or their families to pay. Defendants face an impossible choice: sit in jail as the case moves through the system; pay a nonrefundable fee to a for-profit bail bonds company; or plead guilty and give up the right to defend themselves at trial. For poorer families, paying this fee can be a significant hardship. They won't ever get the money back regardless of the outcome of the case – even if the arrest was a case of mistaken identity and no charges were ever filed.

Nationally, rapidly expanding jail populations can be attributed, in part, to a growing reliance on pre-trial detention, according to a May report from the non-profit Prison Policy Initiative. Therefore, the national trend away from money bail is a welcome development. Getting rid of money bail, and therefore releasing many more people pretrial, is a high-impact policy shift that can dramatically improve millions of lives.

In LA, nearly half of the county's jail inmates are being held while they await trial—usually because of an inability to post bail. And between May 2016 and May 2017, defendants in LA County paid approximately \$173 million in non-refundable cash to bail bondsmen, and \$13.6 million directly to the courts, according to a report commissioned by California Chief Justice Tani Cantil-Sakauye.

Data from jurisdictions that have gotten rid of money bail shows that releasing more people doesn't correlate with a high level of rearrest for violent crimes. The shared goal of reforming bail is to get rid of the wealth-based pretrial system — and to do this without a significant increase in crime or failure to appear in court. There is also a risk that in lieu of money bail; too many people may be unnecessarily assigned onerous forms of supervision, such as electronic monitoring, which advocates argue can be nearly as punitive as being in jail.

Based on the Board's approval of the County's motion on Bail Reform in March 2017, County Counsel has convened a steering committee to

choose a risk assessment tool “and means of using and validating” the tool, as well as identifying “resource and training requirements” for the tool of choice. This workgroup will set up a pilot project, with a system for data collection so that the county can evaluate the program on an ongoing basis.

But while there is wide consensus that bail reform is needed, there’s disagreement about what it should look like. There are many specific proposals across jurisdictions, but these are the main elements that advocates tend to agree on: Releasing the majority of people as they await court hearings with no conditions except making all court appearances, and make very limited use of pretrial detention, and increasing the use of “pretrial services,” which could include check-in calls with officers and texted court reminders, which studies have shown can significantly improve court appearance rates, as well as helping people attend court by offering transportation.

More than 100 groups, including the ACLU and NAACP, recently signed a statement advising against adopting pretrial risk-assessment tools, warning that risk assessment tools rely on historical group data that are biased against communities of color, and therefore can worsen racial disparities and increase incarceration.

Opponents of risk assessment want the vast majority of people who are arrested to be released (some with pretrial services), make liberty the norm, and pretrial detention or punitive supervision the carefully limited exception. Studies currently show that even the “high risk” group, as it is labeled in risk assessment tools, has only about an 8 percent chance of being arrested for a new violent crime within six months.

Governor Jerry Brown signed the State’s Bail Reform legislation, Senate Bill 10 (SB10), into law in the summer of 2018, abolishing cash bail and replacing it with a system that grants judges more power to decide who should stay behind bars before trial. However, the referendum to allow California voters to decide on the fate of the new law has qualified for the November 2020 ballot, suspending SB10 until voters have a chance to decide its fate.

For these reasons, the effort to determine what the model for bail reform in Los Angeles County should be coordinated with the various pretrial release efforts that are being developed and implemented in the County, and statewide. For example, the pilot partnership between the Bail Project, UCLA Law School, and the Public Defender's office in Compton Courthouse, which secures bail reductions and pretrial release for people who have not been convicted of any offense. The Public Defender's office estimates that roughly 7 out of every 10 clients the public defender's office represents in Compton, indicate that they cannot afford bail and therefore sit in jail before trial while their lawyers fight their case.

Some of the success of this project has relied on the California Appellate Court's decision in *In re Humphrey* (currently pending review with the California Supreme Court) which found that judges should consider a defendant's ability to pay and non-monetary alternatives to money bail when setting an amount of money bail or setting conditions of release. And in 2018, Governor Brown signed Assembly Bill 1810 and Senate Bill 215 into law, which together, now allow for pre-plea, mental health diversion into treatment and services, and away from the criminal justice system.

WE, THEREFORE, MOVE that the Board of Supervisors direct the Office of the County Counsel, in consultation with the Superior Court Judges, the Public Defender, the District Attorney, the Alternate Public Defender, the Office of Diversion and Reentry, the Probation Department, the Sheriff's Department, the Department of Mental Health, the Department of Public Health, the Department of Health Services, formerly incarcerated individuals and their families, community advocates and stakeholders, legal and civil rights organizations, to report back in 90 days with:

- 1) Recommendations for pilot programs:
 - a. to fully implement AB1810 and prior County bail reform motions,
 - b. increase use of the County's various pre-plea diversion programs, including obtaining mental health assessments by a confidential mental health expert in arraignment court, and expediting service linkages and service navigation for defendants at arraignment,

- 2) Hire a consultant(s) to develop for the County's plan for bail reform that builds on existing and planned pretrial diversion efforts, to include recommendations based on best practices for:
 - a. Safely reducing the population of people detained pretrial where alternatives to incarceration or cash bail will reasonably address safety and return to court concerns;
 - b. Validate the Laura and John Arnold Foundation Pretrial Risk Assessment Tool using available grant funding;
 - c. Evaluate proposals for pilots for bail reform that both include and do not include the use of risk assessment tools;
 - d. Models for allocation of responsibilities to conduct pre-arraignment and/or pretrial assessments, service linkages, court date reminders, transportation, child care, and other support services, to include recommendations for how these processes should be run, which departments should be involved, and what role(s) community-based organizations can play.
 - e. A plan for evaluation of the outcomes of the above pilots, including gathering data, metrics to be evaluated, evaluators who can be engaged from the outset.
- 3) Report back should include assessment of projected costs for staffing, operations, and services, as well as potential sources of funding for these pilots, considering sources such as AB109 funds, including the AB109 Innovation Fund, and funding available through the State.

WE FURTHER MOVE that the Board of Supervisors direct the Chief Executive Officer and the Sacramento Advocates to advocate with the State for additional funding to support the County's pretrial reform efforts.

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